

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE
OF MICHIGAN,

Plaintiff,

CASE NO. 08-6961

VS

HON. TIMOTHY M. KENNY

JAMES ANDREW POWELL,

Defendant. /

MOTION FOR RELIEF FROM JUDGMENT

Now comes Defendant, James A. Powell, in propria persona, pursuant to MCR 6.501 et seq., seeking relief from judgment of conviction and sentence. Defendant further states:

1. Defendant James A. Powell [537041] resides at Bellamy Creek Correctional Facility, 1727 W. Bluewater Hwy, Ionia, MI 48846.

2. Defendant was convicted by guilty plea to second degree murder, Assault with a dangerous weapon, felony firearm, and habitual offender - second, before Judge Timothy M. Kenny, and sentenced concurrently to 25-40 years, 2-5 years, 2-5 years, and consecutively to 2 years for felony firearm.

3. Defendant was denied relief on appeal of right, on 10/7/09, wherein, through appointed counsel, the following issue was raised:

MR. POWELL WAS DEPRIVED OF DUE PROCESS OF LAW WHERE THE COURT SENTENCED HIM BASED ON ALLEGED ACTS NOT SUPPORTED BY THE RECORD, NOR FOUND BY A JURY, NOR ADMITTED TO BY PETITIONER, NOR INDIVIDUALIZED

4. Defendant sought leave to appeal to the Michigan Supreme Court based on the same issue, and was denied leave on 7/26/10.

5. Defendant presents the following grounds for relief herein:

I.

MR. POWELL WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF COUNSEL AND DUE PROCESS WHERE THE PLEA BARGAIN WAS ILLUSORY AND THE PLEA WAS NEITHER INTELLIGENT NOR VOLUNTARY, WHERE (1) MR. POWELL PLED GUILTY TO 2ND DEGREE MURDER IN EXCHANGE FOR DISMISSAL OF EXCESSIVE CHARGES AND A SENTENCE OF 27-40 YEARS WHEN PROPERLY-SCORED GUIDELINES CALLED FOR A SUBSTANTIALLY LOWER

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SENTENCE, AND (2) WHERE THE ADMISSION IS INSUFFICIENT TO ESTABLISH MALICE FOR 2ND DEGREE MURDER OR TO ESTABLISH ASSAULT WITH A DANGEROUS WEAPON

II.

THE FELONY MURDER STATUTE IS UNCONSTITUTIONAL AS APPLIED: LARCENY UNDER \$1,000 IS A MISDEMEANOR AND CANNOT SUPPORT A FELONY MURDER CHARGE

III.

MR. POWELL WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF COUNSEL WHERE COUNSEL FAILED TO RAISE SPECIFIC SENTENCE-SCORING ERRORS BASED ON CONSTITUTIONALLY INACCURATE INFORMATION NOT ADMITTED TO BY MR. POWELL

IV.

PRIOR RECORD VARIABLE (PRV) 7, WHICH ENHANCES THE SENTENCE BASED ON SUBSEQUENT OR CONCURRENT FELONY CONVICTIONS, IS UNCONSTITUTIONAL ON ITS FACE AND AS APPLIED, IN THAT IT VIOLATES THE DOUBLE JEOPARDY AND TITLE-OBJECT CLAUSES OF THE FEDERAL AND MICHIGAN CONSTITUTIONS

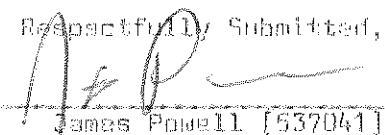
6. Defendant is entitled to an evidentiary hearing to make a record of Defendant's claims of ineffective assistance of counsel and actual innocence claims to support his claims of cause and prejudice for procedural default. MCR 6.508(C). Where non-record evidence forms the bases of the issues to be decided, an evidentiary hearing should be ordered. See Motion, attached herewith

7 Defendant asserts that cause and prejudice is established by his showing of ineffective assistance of counsel, and actual innocence

Wherefore, Defendant James Andrew Powell requests that this court order an evidentiary hearing so that he may make a record in support of his claims, and vacate Defendant's conviction and sentence.

Date:

Respectfully Submitted,



James Powell [537041]
Bellamy Creek Corr. Facility
1727 W Blumwater Hwy
Ionia, MI 48846

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE
OF MICHIGAN,

CASE NO. 08-6961-CZ

VS

HON. TIMOTHY M. KENNY

JAMES ANDREW POWELL,
/

BRIEF IN SUPPORT OF MOTION FOR RELIEF FROM JUDGMENT

STATEMENT OF FACTS

On or about 7/21/07, Haidar Al-Ganzawi was shot by Defendant James Powell in the lower abdomen after an argument and physical altercation. Defendant filed the case and was later accepted and charged with first degree murder, felony murder, assault with intent to murder (2 counts), felon in possession of a firearm, felony firearm, and habitual offender - second.

On May 15, 2008, a preliminary examination was held in the 36th District Court before Judge Lynn Brynildsen. Assistant Prosecutor Lawrence Tabor appeared on behalf of the People. Attorney Douglas Hampton appeared on behalf of the Defendant James Powell.

David Aljamal testified at the preliminary exam. Mr. Aljamal testified that the defendant Haidar Al-Ganzawi was his friend, and that he was present the night the defendant was shot. Preliminary Exam Transcript, 5/18/08, pp. 14-15 (Hereinafter, P.T.). Mr. Aljamal testified that he knew Mr. Powell from the neighborhood. P.T., Vol. I, p. 15.

Michael Aljamal testified that Mr. Powell asked Haidar [the defendant] about money. P.T., Vol. I, pp. 20, 24. Aljamal stated "And he told Haidar like 'Fuck you.' And Haidar was like 'Fuck you bitch' and Haidar pushed him." P.T., Vol. I, pp. 28, 40-41. The witness saw Haidar Al-Ganzawi push Mr. Powell in the street. P.T., Vol. I, p. 26.

Aljamal heard Mr. Powell use the words "motherfucker" toward the defendant, and heard the defendant use the words in return to Mr. Powell. P.T., Vol. I, pp. 24, 40.

The witness testified that he sometimes played hookball with Mr. Powell and "smoke[d]" weed with Mr. Powell at [the house on] Red and. P.T., Vol. I, p. 30. The witness did not know whether Mr. Al-Ganzawi owed Mr. Powell money. P.T., Vol. I, p. 40.

Mr. Aljamaoui admitted to calling Mr. Powell on the telephone. P.T., p. 47. He also admitted that Mr. Powell knew a friend for Halder and Halder doesn't have any problem with him. P.T., Vol. I, pp. 48, 49.

Attorney Robert McDuffie appeared on behalf of Emmy Donald, driver of the truck and Mr. Powell's girlfriend. McDuffie informed the court that Mr. Powell would be exercising his rights under the Fifth Amendment. P.T., Vol. I, p. 58. After questioning began, Mr. Donald did so. P.T., Vol. I, p. 62.

The exam was postponed until May 23, 2008. Ms. Donald testified that she dropped Mr. Powell off at the Rutland address and left Mr. Powell there. P.T., Vol. II (5/23/08), p. 11. Ms. Donald saw a "bunch of guys." P.T., Vol. II, p. 11. A couple of hours later, Mr. Powell called Ms. Donald and told her to come back. P.T., Vol. II, p. 12. Mr. Powell called and said he came from Mr. Powell's uncle's house on Grandmont to the house on Rutland at about 5:30 or 6:00 that evening. P.T., Vol. II, p. 13. Ms. Donald testified that she followed Mr. Powell, who drove his uncle's white Suburu, away to Grandmont from the Rutland address. pp. 14-15. Mr. Powell left Ms. Powell at the Grandmont address. p. 17. A couple hours later, Mr. Powell returned there. p. 7. Ms. Donald then drove Mr. Powell back to the Rutland address at about 8:30 pm. pp. 17-18. She saw the same guys she saw earlier. p. 18. She sat in the car about 30 minutes to an hour waiting on Mr. Powell, who was at the Rutland address. p. 20. Another 20 minutes passed before Mr. Powell returned to the car. p. 21. Mr. Powell then had Ms. Donald drive back to the Grandmont address to "get something" from his cousin, Lou. p. 21. Mr. Powell returned to the Rutland address. p. 22. After arriving at Grandmont, Lou gave a gun to Ms. Donald. p. 23. Ms. Donald returned to 5890 Rutland and parked in the same place she was before. p. 24. Ms. Donald saw Mr. Powell put the gun in his waistband and get out of the truck. p. 24. About 20, 25 minutes later, Ms.

Donald heard a couple of little shots. p 25. Mr. Powell then returned to the truck and banged on the window and was let in. p 25. Mr. Donald drove off with Mr. Powell to Mr. Powell's mother's home. p 26. Mr. Donald didn't know what happened or cause the shots she heard. pp 30-39. Mr. Donald did not know what gun the shots came from. p 39.

Ali Khudair Al Garzawi -- the brother of the deceased -- testified that he was sitting on the porch of his brother's home on Rutland, when Mr. Powell started walking in from the street and then he came. He came he said he wanted money but my brother was leaning on the car. p 54. Ali Khudair Al Garzawi said that his brother "didn't give him money so he shot him." p 55. Ali Al Garzawi testified that Mr. Powell took nothing from the deceased. pp 55-56. Ali Khudair stated that Mr. Powell said to him, "I want money" and "I need money." p 57. Ali Al Garzawi testified that he arrived "five minutes before the incident happened." p 60. Ali testified that Mr. Powell was not a friend of his brother, Haider, but that Mr. Powell was a friend of Raed, who lived with Haider. p 61. When asked whether Mr. Powell had a gun in his hand when he arrived, Ali stated that Mr. Powell did not, but that he pulled it out later. p 62. Ali denied that there was any argument prior to the shooting. p 63. Ali denied that Haider pushed Mr. Powell prior to the shooting. p 63. When asked whether he remembered telling the police that Haider stood up and pushed Mr. Powell, Ali stated that he did not remember, and that whoever translated that must have thought that. p 64.

Yasser Al Garzawi -- also a brother of the deceased, Haider Al Garzawi -- stated that he was on the porch when his brother was shot. p 69. Yasser denied knowing Mr. Powell. p 70. Yasser testified that "Mr. Powell came walking, he said give me money. He told him I don't have no money, I'm not giving you money." p 71. After saying that he had no money, Mr. Powell shot

info. p 71. Yassar stated that "[a]fter he asked Holder for money and Holder told him 'I don't have money, I just gave him out his hand in his pocket.'" p 71. Yassar stated that Holder owned Mr. Powell. p 72. Yassar stated that he had never seen Mr. Powell before the day of the shooting. p 73. The court addressed the people in the audience to cease handing notes. See, e.g., p 75. Yassar stated that Reed did not arrive until "[j]ust before . . . Holder was shot." p 76. When asked whether Holder pushed Mr. Powell, Yassar denied it. p 80. Yassar, like his brother, Ali, claimed the translator must have mistaken his answer given to the police after the incident. p 86.

The Prosecutor then moved to find Defendant Powell guilty on felony murder, first degree murder, assault with a dangerous weapon, felon in possession of a weapon, felony firearm, and habitual -- second, after dropping the assault with intent to murder counts.

Before trial, Mr. Powell was offered a plea bargain -- Plead guilty to 2nd degree murder, felon in possession, felony firearm, assault with a dangerous weapon, and felony firearm, and the Prosecutor would recommend a sentence of 27-40 years, and dismiss felony murder and first degree murder charges. This was a horrible deal entered into without any knowledge of the weight of the state's case. Counsel did not advise Defendant about the advantages or disadvantages of taking the plea. Counsel failed to explain that there were complete defenses to felony which was used to support felony murder, and there was little or no evidence to support a premeditated killing. Counsel erroneously led Defendant Powell to believe that bringing the gun could suffice for first degree. In other words, counsel did not explain that bringing the gun did not necessarily, in and of itself, equate to intent to kill. No explanation or advice was given, and nothing was ever said about the proof needed for second degree murder either. Finally, counsel did not in

Taylor, to say that the intent to commit the felony could not equate for the standing of malice. Mr. Powell believed that what he had admitted to was murder, notwithstanding the provocation testified to at the preliminary exam. Counsel never bargained for a manslaughter plea, and Mr. Powell is convinced that he is innocent of murder, and at the most, he is only guilty of manslaughter. But for poor or no advice, Mr. Powell would not have pled guilty to murder. In fact, after close examination of the record, Mr. Powell asserts that the evidence he gave does not establish murder at all. Armed with a deeper understanding of the charges and the elements needed to prove them, Mr. Powell is prepared to either plead guilty to manslaughter as he pled on all murder counts.

With respect to assault with a dangerous weapon, Defendant contends that he is innocent of these charges based on the fact that he really did believe he was in danger and that shooting in the air to end the pursuit of four men was not unreasonable and that it was self defense. Mr. Powell seeks relief from the judgment and sentence based on the reasons in his brief attached.

AMENDMENT 7

MR. POWELL WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF COUNSEL AND DUE PROCESS WHERE THE PLEA BARGAIN WAS ILLUSORY AND THE PLEA WAS NEITHER INTELLIGENT NOR VOLUNTARY, WHERE (1) MR. POWELL PLEA GUILTY TO SECOND DEGREE MURDER IN EXCHANGE FOR DISMISSAL OF EXCESSIVE CHARGES AND A SENTENCE OF 27-40 YEARS WHEN PROPERLY-SCORED GUIDELINES CALLED FOR A SUBSTANTIALLY LOWER SENTENCE, AND (2) WHERE THE ADMISSION IS INSUFFICIENT TO ESTABLISH BALANCE FOR 2ND DEGREE MURDER OR TO ESTABLISH ASSAULT WITH A DANGEROUS WEAPON

STANDARD

Voluntary Plea

The question of whether a plea is voluntary for purposes of the Federal Constitution is a question of Federal law, and not a question of fact. MARSHALL V. LOMBERGER, 459 U.S. 422,431 (1985). Constitutional issues are issues of law that are reviewed de novo. PEOPLE V. PITTS, 224 Mich App 260,263 (1977).

Ineffective Assistance

A claim of ineffective assistance of counsel is a Constitutional issue which is reviewed de novo. PEOPLE V. LEDLAND, 465 Mich 575,579 (2002); PEOPLE V. PICKENS, 446 Mich 295,350 (1994). The performance and prejudice components are mixed questions of law and fact. STRICKLAND V. WASHINGTON, 466 U.S. 668,692 (1984).

Defendant must show that counsel's performance was deficient. This requires a showing that counsel's performance was deficient. This requires a showing that counsel made errors or omissions that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. The D-Board must also show that the deficient performance prejudiced the defense. STRICKLAND, 466 U.S. at 687.

Sufficiency of the Evidence

Questions regarding the sufficiency of the evidence are reviewed de

determinative, on the basis of all the evidence viewed in a light most favorable to the prosecution. If a reasonable factfinder could conclude that all exposed elements of the claim were proven beyond a reasonable doubt. PEOPLE V BATHES, 223 Mich App 230,237 (1997), citing PEOPLE V HAMPTON, 407 Mich 354 (1979). Factual Findings are reviewed for clear error. See, e.g., ALAN CUSTON HIMES, INC V KNOX, 256 Mich App 505,512 (2003).

Cause and Prejudice

In PEOPLE V REED, 446 Mich 376 (1998), the Michigan Supreme Court affirmed the staff counselor's ex parte call and held that Michigan courts follow Federal standards when interpreting provisions in MCR 6.500 et seq., which were promulgated after the Federal habeas corpus statute. The standards of good cause and prejudice are "based on several decisions of the United States Supreme Court." See MAINWRIGHT V SYKES, 433 U.S. 72 (1977)(stays prisoner habeas corpus action); UNITED STATES V PRADY, 496 U.S. 152 (1990).

A procedural bar, like a failure to previously raise a claim, may be overcome, allowing a court to review the merits, "only upon a showing of error for which fault and prejudice to the petitioner," MAINWRIGHT, supra, 433 U.S. at 87, or upon a showing that a failure to consider the claim will result in a fundamental miscarriage of justice. See HARRIS V REED, 489 U.S. 256, 262-63 (1989)(quoting MURRAY V CARREER, 477 U.S. 478,495 (1986)); COLEMAN V THOMSON, 501 U.S. 722,750 (1991).

Cause may be established by showing that the factual or legal basis for a claim was not reasonably available to counsel, or that some interference by state officials made compliance impracticable, or that the procedural default is the result of "substantial assistance of counsel." MURRAY V CARREER, supra, 477 U.S. at 488. Actual prejudice must be demonstrated by showing that the

seems at least slightly weak at best. Defendant's actual and substantial disadvantage, affecting the nature of the trial with respect to Constitutional dimension. UNITED STATES V. FRADY, supra, 456 U.S. at 152,170.

DISCUSSION

Defendant James Powell pled guilty to second degree murder, the murder of a person with a dangerous weapon, felon in possession of a weapon, Felony Possession and habitual offender status, in exchange for the dismissal of Felony Murder and First Degree Murder charges and a sentence of 27-40 years in prison.

Defendant Powell contends that (1) for a person similarly situated (convicted of 2nd degree murder), the dismissal of Felony and First Degree murder charges, for which there was no evidence of an intent to kill or to commit an assault on Felony who however - especially an alleged misdemeanor - to support a Felony murder - and a sentence of 27-40 years was not a disproportionate penalty; and (2) the sentence by Mr. Powell does not establish murder in any degree. Defendant contends that, in either case, that he would have received a sentence substantially less than 27-40 years - i.e., either because properly applied 2nd degree murder guidelines would have placed him in a less severe class, or because at most, Mr. Powell is guilty of no more than manslaughter.

In a light most favorable to the prosecution, Mr. Powell attempted to commit a dangerous taking from the deceased. By all witness accounts, Mr. Powell demanded \$100 or \$200 dollars which they claim was used to buy a "Big Bull" puppy. See Statement of Ali Al-Hamad Ex. 4; and Statement of Basim Al-Jamali. Ex. 2. If this was the case, as the state alleges, then no case has been established except for a misdemeanor. The whole case says that this MISDEMEANOR can support a FELONY MURDER charge. Mr. Powell contends that this is an absurd result and the result, as the case and as applied in

unpremeditated. See Argument II, infra.

Again, in the light most favorable to the prosecution, Defendant Paul D. Anderson charged that Elmer David being a gun in the the Ballard residence. The state charged that Mr. Powell intended to assault and murder the three witnesses, yet claims that there was a spontaneous shooting. Mr. Powell contends that this, too, is absurd. Besides does the evidence suggest why this gun was brought to the scene, although it is charged that Mr. Powell brought it to kill Mr. Heider Al-Gonzalez, in the state of first degree murder theory. Mr. Powell contends that the bringing of the gun, alone, may establish premeditation for something, but not to kill Al-Gonzalez. In fact, the state is overruling evidence shows that a fearful, hot and unhesitant demand was made for the money and that no gun came out until after Mr. Powell is pushed by the demand, and after hostile words are exchanged between the two. Mr. Powell contends that even if he was the initial aggressor, there was some show enough that blood is shed. This homicide is manslaughter, not a murder.

Mr. Powell never admitted being active for killing Mr. Al-Gonzalez. He Powell never placed on the record any remaining for the act from which action could be considered. Theoretically, if this was a first degree murder, Mr. Powell would solemnly admit to a Felony murder or first degree murder, and then the Prosecutor would discuss the Felony Murder and First Degree Murder charges and accept a plea of guilty to the lesser charge of 2nd Degree Murder. That would be a bargain -- a man guilty, or likely guilty of First degree murder pleads guilty to 2nd degree. This did not happen. The Prosecutor charged the highest offense he could find based on the Plaintiff's evidence and the most contradictory theories to break the will of defendant and force a plea. See Section, Exam, Transcript above. Research, Ryan, Trial, 10.

murder is dismissed up 84-87. But for the rest blood of life without mercy, the Prosecutor would not have the leverage to force such a plea and non-prosecuted deal. In other words, The state never had a First Degree murder case which could survive a trial at all. It is this kind of bargaining that is inherently unfair and Mr. Powell conducted this with proper representation, and full a bit of explanation and explanation of his options. By contrast, Mr. Powell would not have pled. Thus, Mr. Powell accepts that he did not intelligently and voluntarily plead guilty to the second degree murder and assault charges.

ARGUMENT

A plea agreement is a contract. UNITED STATES V. ROBINSON, 924 F.2d 612,613-14 (6th Cir 1991). A plea agreement is negotiated and entered pursuant to additional contractual principles. *Id.* As a matter of Federal Constitutional Law, "[t]he requirement that a plea of guilty must be intelligent and voluntary to be valid has long been recognized." BRADY V. UNITED STATES, 397 U.S. 762,767 Fo 4 (1970). There is no liberty plea bargain when Defendant believed the deal to have one value when in fact it had another lesser value. PEOPLE V. PETER WILLIAMS, 113 Mich App 348 (1986); UNITED STATES V. RANDOLPH, 250 F.3d 243 (6th Cir 2000).

The court must ascertain whether the plea is voluntary and not a plea support for a finding that defendant is guilty of the offense to which he pleads guilty. MCR 6.502(6)(1). The Prosecutor did no more than bluff with excessive charges which in all likelihood could not sustain a defense by an attorney prepared to fight. The Prosecutor's duty is to seek justice. BENDER V. UNITED STATES, 295 U.S. 78 (1935). He may not use "deceptive methods to produce a wrongful conviction." *Id.*, 295 U.S. at 88. It is the burden of proving each and every element of the charge. PEOPLE V. GAINES, 223 Mich App

230,235 (1997)(citing PEOPLE V TAYLOR, 176 Mich App 374,376 (1989))

A. The Plea is Illusory

If the Defendant in good faith believed that the money was his and that he was entitled to its possession, he is not guilty of robbery or larceny. PEOPLE V HULCOMB, 345 Mich 326 (1975); PEOPLE V SHAWNDING, 268 Mich 210 (1934); PEOPLE V MCCANN, 42 Mich App 47 (1972). Furtive intent is an essential and inseparable ingredient in every larceny, and a person who takes property under a claim of right, has not committed larceny. "Though a man may 'steal' or attempt to 'steal' any property from the defendant except for what Defendant Powell demanded as rightfully his. A larcenous taking is complete when there has been appropriation of property. See, e.g., PEOPLE V RANDOLPH, 466 Mich 532 (2002)(taking accomplished when defendant altered merchandise under his clothing without force). Larceny requires that there be a "STEALING" of property. PEOPLE V STEVENS, 9 Mich App 531 (1968). There was absolutely no evidence that Defendant ever claimed or attempted to claim anything. The record evidence taken by police reflects the following:

WITNESS RAAD AL JAMLAWI

(Statement taken by Officer Ed Williams Ex. 2)

Q. Mr. Aljamawi, what can you tell me about the fatal shooting that occurred in front of 6890 Rutland late last night (7/21/07)?

A. I was standing in front of my house along with my brother, Haidere [Al Razzaqi], Yaz (sic), & Ali. While we were outside a guy named Jimmy pulled up. Jimmy got out the passenger side of the truck and walked up to Haidere. He asked Haidere if he had \$100 for him. Haidere told Jimmy no. Jimmy started walking away and saying "Oh I'm take that?" The next thing I know Jimmy pulled a gun from his waistband and just started shooting at Haidere. When he stopped shooting the other guys tried to grab Jimmy so he started shooting at them. Jimmy ran and jumped back in the truck and drove North on Rutland.

* * * * *

Q. Was Jimmy and Haidere having any problems?

A Yes.

Q How do you know Jimmy?

A I have known him for about 4 yrs. He used to live on Habbani st. So we met Jimmy smoking weed & playing basketball.

WITNESS ALI KHUDEIR AL GANZAMI

[Statement taken by Sgt. K. Gordon Ex. 3]

Q Can you tell me how Habbani was that night?

A We were sitting on the porch and we were just talking. There was, Habibe, Ali, Yous (sic), Sam (sic) and another Ali. While we were talking a black male came walking up. He walked up and he pulled out a gun and started pointing it and saying, Money, Money. Habibe asked us and he pushed him and said no money. That is when he started shooting. The first two hit Habibe, then the other three went back and forth.

* * * * *

Q Did not get any money?

A Yes.

WITNESS ALI A. HAMEED

[Statement taken by Inv. Marie Hachiy, Ex. 4]

Q What can you tell me about the fatal shooting of Habibe Al Ganzami?

A I am sorry, we were all sitting on the porch, talking, laughing.

Q Who is me?

A My uncle Habibe, his two brothers Ali Ganzami, Yous Ganzami, Mohammed (sic) and his friend.

Q What time was this?

A Sometime after 10:00.

Q Tell what happened.

A A guy named Jimmy Bush ... came over from the ...
in front of him. He had been dropped off by his girl.
Jimmy ask my uncle for \$100 that was owed. My uncle
sawed back he didn't have it and he gave him
properly. I then saw Jimmy on his cell phone. He was
telling his girl to go upstairs to get his gun. Approx

the machine took his coat off him, Jimmy walked over to the vehicle and got into the passenger side. He got out pulling Poma his trunk and said to my uncle, "Oh, it's like that" and Poma is silent.

Defendant was asked whether he had any "input" reason for the shooting, to which he answered, "No." The question is not proper to deem a question of Mr. Powell had he or given any meaningful explanation of all about the weight of the victim's body, and the available defense. Counsel failed to respond to the Defendant about any "input" reason of the case when the judge inquired about. "Counsel" means to advise the advantages and disadvantages ... and to make a reasonable effort to discover the Defendant's wishes." ROE V FLORES-ORTEGA, 528 U.S. 470 (2000). Counsel did not.

In POWELL V ALABAMA, 287 U.S. 45,69-69 (1932), the U.S. Supreme Court explained the obvious about counsel's vital role in the criminal Defendant's Sixth Amendment rights:

The right to be heard would be of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with a crime, he is incapable, generally, of determining for himself what the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of competent counsel, he may be put on trial without a proper charge He lacks both the skill and knowledge to adequately prepare his defense even though he may have a perfect one He requires the guiding hand of counsel at every step in the proceedings against him.

Counsel did not respond to the Defendant Powell about what charges were backed by said evidence and which ones were not after hearing Defendant's claim that the argument caused the shooting, not sexualization. In other words, when there was evidence of her blood, evidence of a physical exam many used to Defendant, and evidence of a physical assault and battery by the deceased, counsel had a duty to put in lawyer's terms the real possibility of a plea deal or trial with an instruction on manslaughter, the possible defense of

self-defense and every independent self-defense. But what County Juries did Mr. Powell in this regard.

The Plea was also illusory because a person with Mr. Powell's law-savvy criminal background, and college student status, and had actually committed a murder, against a random victim, and who acted with malice, and who had not on medical tests which were likely to cause death, would have received a lesser sentence than 27-49. Even Mr. Powell, if properly advised, would have received a substantially lesser sentence. See Argument II.

Mr. Powell probably knew nothing about PM 7, which could refer either to the guidelines upon the subsequent or subsequent convictions. When granted was limited to his preliminary exam, caused failed to persuade the jury in that the Plea degree premeditated murder or the felony murder charge, when he probably could have if he had an investigation prior to his exam. There was no evidence of an intent to kill presented. The premeditation of bringing the gun does not keep forward and amount to intent to kill, especially beyond a reasonable doubt for intent. At any rate, Defendant Powell could have given a trial and lost, and received a 25-49 year sentence. There was no reason to find it on the whole on a live plea. A Wayne County jury is usually savvy enough to not mind easily occurred between Defendant and the victim.

B. Plea Insufficient

The Plea admitted to do and agreed to 2nd degree murder, and necessarily do not amount to felony or first degree murder. The exact reflection:

[MR. HAMPTON]: Your Honor, today is the date and time for live plea. The offer is made by the People. Live discussed this offer at length with my client and he has indicated that he would like to accept the offer of the People.

[THE COURT]: Is that correct, sir?

MR. POWELL: Yes.

THE COURT: What is the offer, Mr. Marked?

MS. WALKER: The offer is if the Defendant pleads guilty to Second Degree Murder, two counts of Felony Assault, Felony in Possession of a Firearm, and Felony Firearm as well as the Habitual Offense, Second Offense. We will dismiss the First Degree Premeditated Murder and we will dismiss the First Degree Felony Murder which is Count One and Count Two in this case.

In addition, the Defendant agrees to serve a sentence of 25 to 40 years on the murder two, plus two years for Felony Firearm and whatever the court deems to impose on the two Felony Assault Counts and the Felony in Possession Count p3-4.

* * * * *

THE COURT: And did you, in fact, shoot Mr. Alphonzo (sp)?

MR. POWELL: Yes, sir.

THE COURT: And as a result of your shooting him you learned that Mr. Alphonzo (sp) died, is that correct?

MR. POWELL: Yes, sir.

THE COURT: How many times was he shot?

MR. POWELL: Once.

THE COURT: And you certainly didn't have any legal basis to shoot him or kill him did you?

MR. POWELL: No, Sir. p 8

There is no factual basis for a murder. There is no record of murder, no question and effort to prove the the result was likely to equal death. There is no such admission made by Defendant Powell. At most, the reason established homicide. Whether Defendant had a legal basis for the shooting is beyond the Defendant's knowledge at that point. His attorney and not provided him with any understanding of the decision to murder and manslaughter or on why Mr. Powell to make an intelligible decision about whether he was getting a fair deal.

A factual basis is sufficient if an incriminatory reference can be drawn

from what the defendant has admitted despite the fact that an explanatory reference can be drawn from the case books. GUILTY PLEA CASES, 305 Mich 96, 120-132 (1975). The 2 grand jury is about a 1/2 mile of fact could properly provide the facts as stated by defendant. PEOPLE V FRAZIER, 100 Mich App 775, 779 (1980). Michigan Courts have not held that a person who is sufficient to find the person is looking, despite the fact of the person to make information.

67, PEOPLE V RICHARDS, 95 Mich App 433 (1980)(more possible case where a person is receiving and receiving stolen property may admit to receiving property);

PEOPLE V NICKERSON, 96 Mich App 604 (1980)(more possible case where a person is receiving and receiving stolen property may admit to receiving stolen property, but not admitted to delivery of stolen property);

PEOPLE V NEGA-PUTZ, 87 Mich App 100, 132 (1978)(more possible case where a person is receiving and receiving stolen property may admit to receiving stolen property, but not admitted to delivery of stolen property);

PEOPLE V HENRY ANDERSON, 141 Mich App 667 (1981)(more possible case where a person is receiving and receiving stolen property may admit to receiving stolen property, but not admitted to delivery of stolen property);

In PEOPLE V BRADFORD, 144 Mich App 416 (1985), Bradford was convicted on his plea of guilty, of drawing checks and that the account contained insufficient funds to cover the checks, but specifically denied knowing that the account contained insufficient funds at the time the checks were drawn. The court held that the factual basis was insufficient, and that the specific intent to defraud was necessary to commit the crime of drawing insufficient funds. It is apparent that above.

The bottom line is that the defendant admitted to second degree murder in the first degree. Mr. Powell concluded that he had not admitted to second degree murder. Again, Mr. Powell said that he had not admitted to second degree murder. Mr. Powell said that he had not admitted to second degree murder. Mr. Powell said that he had not admitted to second degree murder.

plausibly in question as to the evidence of intent to murder. The same evidence which the state claims supports murder supports manslaughter.

"Matter requires an intent to cause the very harm that results as none here of the same general nature, or in not done to sustain an intent inferred of the plain and strong likelihood that such harm will result." PEOPLE V AARDEN, 403 Mich 672, 676 (1980). Under the direction of JACKSON V VIRGINIA, 443 U.S. 307 (1979), which holds that due process is satisfied if "any rational view of fact could have found the essential elements of the crime beyond a reasonable doubt," the plea in this case is lacking the elements to sustain a murder of any kind. There is no more an intention to murder than there is to manslaughter by the plea. A killing without intent to kill can be murder or manslaughter or lesser offense when homicide is concerned. As such, this case should reach relief by entering a conviction for manslaughter and releasing Mr. Prall, or, in the alternative, grant a trial on the merits on all original charges.

ARGUMENT II

THE FELONY MURDER STATUTE IS UNCONSTITUTIONAL ON ITS FACE AND AS APPLIED: LARCENY UNDER \$1,000 IS A MISDEMEANOR AND CANNOT SUPPORT A FELONY MURDER

STANDARD

Questions of statutory interpretation are reviewed *de novo*. PEOPLE V BUEHLER, 477 Mich 16, 23 (2007). Constitutional claims include those regarding statutes, and are reviewed *de novo*. PEOPLE V RODRIGUEZ, 251 Mich App 10, 25 (2002)

DISCUSSION

Defendant contends that the felony murder statute applies to murder committed during the commission of a felony. PEOPLE V AARON, 408 Mich 672 (1980). In addition, Mr. Powell contends that the statute violates the Title Object Clause of the Michigan Constitution.

ARGUMENT

A. Facial Unconstitutionality

On its face, the statute is unconstitutional because it punishes conduct that is not a felony. "Larceny of any kind" includes misdemeanors, and this is simply not what the historical use of the felony murder doctrine was designed to address. For centuries, the felony murder rule has applied to felonies, treason, the crime. Michigan has been ill to implement a misdemeanor larceny from a person to elevate it to felony murder capital. PEOPLE V AARON, supra, made it clear that the intent to commit a felony cannot be equated with motive necessary to convict for murder. To include misdemeanors however is to disregard the elements required to convict of murder. A misdemeanor cannot be said to be equal to an act committed with the intent to cause the very harm that results or the reckless disregard for the likelihood that great bodily harm would result from the act. According to the World

Albano and Book of Felix, 2009, however, notes in only 2% of armed robberies, homicides. It can hardly be said that death would be the likely or probable result of a misdemeanor larceny, which requires that no force be used. At best, a homicide could occur only after the attempt or taking was complete. It could not be a misdemeanor larceny say otherwise. Defendant Powell can find no law in reason for such claim.

Even if the position of misdemeanor larceny in the felony murder statute was correct, the Title-Object Clause prevents the statute from embracing the misdemeanor act. If there was such an Act which elevated misdemeanors to felonies and made them proper as the foundation for life without parole when committed in conjunction with a murder, there would still have to be a statute that addressed misdemeanors that were eligible for such treatment. Michigan Code, 1963, Article IV § 24 provides that

No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its title contained and set forth by its title.

Defendant Powell contends that the statute was so far amended to include the misdemeanor. This was not the original purpose of the statute.

As applied to Defendant Powell, there are never any witnesses to support stealing money for larceny and there was no showing of force used unless the demand for money is force. If this is so, then misdemeanor larceny is not an appropriate charge. If, there was no force, then there was no crime, because a demand for money is not illegal. If, no one witnessed say, what the gun was out before he asked for the money, there is no larceny here. That is sufficient force. The application of the felony murder statute to Defendant's alleged conduct is extremely unfair. This statute was abused to Defendant's crime, and can easily be avoided. For these reasons, the language "Larceny of any kind" should be stricken as unconstitutionally vague and violative of the Title-Object and Double Jeopardy Clause.

ARGUMENT III.

MR. POWELL WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF COUNSEL WHERE COUNSEL FAILED TO RAISE SPECIFIC SENTENCE-SCORING ERRORS BASED ON CONSTITUTIONALLY INACCURATE INFORMATION NOT ADMITTED TO BY MR. POWELL.

STANDARD

Ineffective assistance of counsel is a constitutional issue governed de novo. PEOPLE V PICKENS, 446 Mich 200, 359 (1994).

DISCUSSION

Defendant was charged with felony murder, first degree murder, two counts of assault with intent to murder, felon in possession of a weapon, felony firearm, and habitual second. The assault with intent to murder was dismissed at preliminary exam. Defendant pled guilty to second degree murder, assault with a dangerous weapon, felon in possession, and felony firearm in exchange for dismissal of first degree murder and felony murder charges, and agreed to serve a sentence of 25-40 years plus an additional two years consecutively for the felony firearm. The Plus Transcript, 7/30/09, pp 8-9 reflects:

THE COURT: Back on July 21st of last 2007 were you in front of 6098 Rutland in the city of Detroit?

MR. POWELL: Yes.

THE COURT: Did you in fact come in contact with an individual that you know or later knew was an individual by the name of Hayric Algonzowie [sic]?

MR. POWELL: Yes.

THE COURT: And, did you in fact shoot Mr. Algonzowie (sp)?

MR. POWELL: Yes, sir.

THE COURT: And as a result of your shooting him you learned that Mr. Algonzowie (sp) died; is that correct?

MR. POWELL: Yes, sir.

THE COURT: How many times was he shot?

MR. POWELL: Once.

THE COURT: And you certainly didn't have any legal basis to shoot him or kill him did you?

MR. POWELL: No, sir.

THE COURT: Am I correct that there were two other individuals Ali Kager Algonzowie (sp) and a Yash Kager Algonzowie (sp) two other individuals that were there at the same location on that same date; is that true?

MR. POWELL: Yes, sir.

THE COURT: And did you point the gun that you shot Mr. Hayder Algonzowie (sp), did you point that gun at those individuals --

MR. HAMPTON: Your Honor, can I have one second?

THE COURT: Yeah, sure.

MR. HAMPTON: Your Honor, just for clarification even at the preliminary exam it was not established that the gun was actually pointed at those individuals, but the gun was used to put them in apprehension which I think still qualifies as a felonious assault.

THE COURT: All right.

MS. WALKER: I believe that's true.

THE COURT: All right. They certainly were present and nearby, and certainly had reason to believe that they might also be shot by you; is that correct?

MR. POWELL: Yes, sir.

THE COURT: And you certainly didn't have any legal right or justification in putting those two men in fear of their lives either; true?

MR. POWELL: Yes.

Michigan adopted statutory guidelines in 1999, which have the force of law. MCL 769.34(1)(2); PEOPLE V LEVERSEE, 243 Mich App 337, 349 (2000). Defendant asserts that the trial court sentenced him on the basis of materially inaccurate information which led to unjustified scores in at least three Offense Variable (OV) categories, totalling 85 points.

The Michigan Sentencing Guidelines and the sentencing scheme requires the

Court to find additional facts which allow the increase of the sentence. These factual findings are neither admitted to by the Defendant, nor found by the court. These factual findings result in scores which placed Defendant Powell in Grids A-F for Prior Record Variable (PRV) scores, and from Grids I-III for various Offense Variables (OV) based on conduct or lack thereof during the commission of the offense. These variables are aggravating circumstances which are not necessary to commit the crime itself, but which are facts above and beyond the commission of the crime to justify increasing the sentence.

Defendant contends that the facts found by the court used to increase his score from Grid I to Grid III. The Michigan courts have ruled that BLAKELY V. WASHINGTON does not apply to Michigan Indeterminate Sentencing scheme. For exhaustion purposes, it is raised here.

1. OV 1 -- Aggravated Use of a Weapon

The "victim" is deceased. Defendant pled guilty to 2nd degree murder and Felony Firearm. As it applies to Felony Firearm, the statute allows 25 points to be assessed when "[a] firearm was discharged at or toward a human being or a victim was cut or stabbed ...". MCL 777.33(1)(c). Defendant valued the issue in the trial court convincing the court that no shots were discharged at or toward anyone. This is verified by the Preliminary Exam Transcript. See also, Sent. Trans., 8/20/88, pp 3-4. Both counts of ABIM were dismissed. In fact, the witness/relative of the deceased stated that Defendant shot in the air and "not near" them. *Id.*

2. OV 3 -- Degree of Physical Injury

By its own terms, this offense variable is not to be scored where the death is the result of homicide. MCL 777.33(2)(b). The death of a person is an element of 2nd degree murder, and is not to be scored. MCL 777.1(c). The score must result in zero. Defendant asserts that he was scored 25 points

initially contrary to the evidence.

3. DV 6 -- Intent to Kill or Injure Another

Defendant asserts that he was unlawfully assessed 25 points for possessing the unpremeditated intent to kill, the intent to do great bodily harm, or create a very high risk of death or harm while knowing that death or great bodily harm was the probable result. See MCL 777.36(1)(b). This offense, well known by its own terms, applies to homicide and ABJM offenses, but does not apply to any offenses in which Defendant pled guilty. The ABJM charges were dismissed. Defendant never admitted to any intent or attempt to kill or injure anyone other than the deceased. The record does not support a score of 25 points or a finding that Defendant intended to kill or created a high risk of death (knowing that death or great bodily harm was the likely result) to anyone OTHER THAN the deceased.

ARGUMENT

A. The Sentence is Based on Inaccurate Information

Defendant was scored 65 points based on materially inaccurate information. But for this error, Defendant would have received a substantially lesser sentence. While it is true that habeas relief cannot be granted simply "on the basis of perceived error of state law," PULLEY V HARRIS, 465 U.S. 37,41 (1984), when the error rises to the level of depriving the defendant of fundamental fairness to the trial process, the claim is remediable as a petition for writ of habeas corpus relief. MATLOCK V ROSE, 751 F.2d 1236,1242 (6th Cir. 1984); ESTELLE V MCGUIRE, 502 U.S. 62,67-68 (1991); CLEMONS V MISSISSIPPI, 496 U.S. 738,746 (1990) (in certain circumstances state procedural laws may create liberty interests that cannot be denied without violating due process).

It is well settled that Defendant has the right to be sentenced on the

basis of complete and accurate information. UNITED STATES V. TUCKER, 404 U.S. 443, 447-49 (1972); TOWNSEND V. DURKE, 334 U.S. 735 (1948).

The misreading of offense variables 1,3, and 6 result in a substantially different sentence guideline to which Defendant was subjected to. A single deduction of 25 points places Defendant in OV Grid II instead of III, which, when interacted with PRV Grid D, results in a minimum sentence of 18.75 years (225 mos) and a range of 225 to 468 months. A deduction of all three scores (75 points) would place Defendant in OV Grid I instead of III, and would result in a minimum sentence of 15 years (180 mos) or a range of 180 months to 300 months (25 yrs). A difference of two grids (III down to I) or, in other words, a difference of a minimum of 270 months compared to a minimum of 180 months, is a significant error reaching constitutional dimension, which cannot be considered harmless. TUCKER, *supra*; TOWNSEND, *supra*; UNITED STATES V. ANDREWS, 240 F Supp 2d 636,638 (ED Mich, 2003).

B. Facts Found By Court Not Admitted

In BLAKELY V. WASHINGTON, 542 U.S. 296 (2004), the United States Supreme Court reaffirmed its earlier holding that with the exception of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt. APPENDI V. NEW JERSEY, 530 U.S. 466,496 (2000). Michigan has held that BLAKELY does not apply to its "Indeterminate Sentencing." See PEOPLE V. HARPER, 479 Mich 599 (2007); PEOPLE V. MCHALLER, 479 Mich 672 (2007). There have also occurred PEOPLE V. HPHAIS, 275 Mich App 151 (2007), which reached the opposite conclusion.

In CUNNINGHAM V. CALIFORNIA, 549 U.S. 270 (2007), the United States Supreme Court affirmed the holding in APPENDI, and held that California's Indeterminate Sentencing Law, which authorized a judge rather than a jury to

find facts exposing defendant to elevated upper term sentence violated defendant's right to trial by jury. CUMMINGS explained in BLAKELY and

APPENDIX

[T]he relevant statutory "maximum" is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose WITHOUT any additional findings. BLAKELY, 542 U.S. at 303-304, 124 S.Ct. 2531 (emphasis in original).

In every case, the Supreme Court discusses "sentence range" not the absolute maximum sentence possible. In Cummingham's case, the jury verdict alone limited the permissible sentence to 12 years. Additional fact-finding by the trial judge resulted in an upper term sentence of 16 years. Id., 549 U.S. at 275. That four-year elevation was held to violate the 6th Amendment. In BLAKELY, the maximum penalty for his offense, under the Washington Reform Act, was ten years, if no facts beyond those reflected in the jury's verdict were added. Blakely could not receive a sentence greater than ten years UNLESS the judge found "felonies expressly." It did not even matter that Blakely's sentence, though outside his "sentence range", was within the ten year maximum. The court held that the top of the sentencing range (50 mos) was the "relevant statutory maximum."

In Mr. Powell's case, before any admissions were given, the court was limited to a sentence range of 130 months - 300 months. This includes the consideration for prior convictions (PCV). It is not until the Sentencing Guidelines call for the judge to make "additional" factual findings, that Defendant Powell's sentence increases from Grid I to Grid III. BLAKELY clearly covers Defendant's case no matter what label Michigan puts on its sentencing scheme.

Counsel failed Defendant here as well. At the time of Defendant's conviction, PEOPLE V THIAUS, 275 Mich App 150 (2007) was the law in the state. This case held that BLAKELY and its progeny did apply to Michigan. Thus, counsel had a duty to raise that issue. Counsel failed to do so.

ARGUMENT IV.

PRIME RECORD VARIABLE (PRV) 7, WHICH EMPHASIZES THE SENTENCE BASED ON SUBSEQUENT OR CONCURRENT FELONY CONVICTIONS, IS UNCONSTITUTIONAL ON ITS FACE AND AS APPLIED, IN THAT IT VIOLATES THE DOUBLE JEOPARDY AND TITLE-OBJECT CLAUSES OF THE FEDERAL AND MICHIGAN CONSTITUTIONS.

STANDARD

Constitutional issues are reviewed *de novo*. PEOPLE V RODRIGUEZ, 251 Mich App 10, 25 (2002).

DISCUSSION

Defendant was convicted and punished for his prior crimes. Defendant pled guilty to the instant charges in exchange for a plea bargain which he believed was within the guidelines and correctly applied. After giving the plea, the state used the PRV 7 to enhance the 2nd Degree Murder guideline score for the concurrent felony convictions.

Liberalizing speaking, Prime Record Variables covers "prior" crimes. BLAKELY V WASHINGTON, 542 U.S. 296 (2004) and APPENDIX V NEW JERSEY, 530 U.S. 466 (2000) understood the large "prior conviction" as written. If a concurrent sentence can be used to enhance the larger sentence which encompasses it, then there appears to be no point to any other measure.

This scheme conflicts with the concurrent sentence doctrine, void law and authority for consecutive sentence doctrine, and violates the prohibition against multiple punishments, and violates the title-object clause.


Defendant and his attorneys were aware of this PRV when he gave the plea. To let a significant increase by counsel. KIMMELMAN V HARRISON, 477 U.S. 365, 383 (1986)(A "single, discrete event" may support a claim for ineffective assistance of counsel). What the state gave the wish and need, it took the away with the left. The whole point of a concurrent sentence is to avoid the multiple punishments. This is not a knowing, voluntary, intelligent or

beneficial benefit. See Argument I. This action does nothing but encourage a
prosecution to dig up and change every crime to own blood. As such,
Defendant's score should be reduced as the entire case overturned and not just the
trial, and the statute rendered unconstitutional.

RELIEF REQUESTED

Wherefore, Defendant asks that the court grant his evidentiary hearing,
vacate his convictions, and enter judgment of guilty of manslaughter, or grant
a trial by jury.

Respectfully Submitted,



James Andrew Powell 537041
Bellemy Creek Facility
1727 W Bluewater Hwy
Ionia, MI 48846

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE
OF MICHIGAN,

CASE NO. 08-6961-CZ

VS

HON. TIMOTHY M. KENNY

JAMES ANDREW POWELL,

BRIEF IN SUPPORT OF MOTION FOR EVIDENTIARY HEARING

STATEMENT OF THE CASE

Defendant James Andrew Powell, in propria persona, was convicted by plea of guilty to 2nd degree murder, assault with a dangerous weapon, felon in possession, and felony firearm -- second. Defendant was sentenced to 25-40 years, plus 2. All other lesser sentences are served concurrently.


After conviction, Defendant realized that what he admitted to was not murder, and that the weight of the Prosecution's case was not great enough to sustain a first degree murder or felony murder conviction. Defendant also believes that the conviction and sentence bargain was illusory, and that non-record evidence supports his claim that he was given poor advice by counsel. Ultimately, Defendant contends that there was no meeting of the minds with respect to the plea deal.

ARGUMENT

Where non-record evidence forms the bases of the claims made by Defendant, and a record is necessary to evaluate those claims, a hearing is required. PEOPLE V GINTHER, 390 Mich 436 (1973).

Wherefore, Defendant respectfully requests that this court enter an order for him to appear at a hearing and make a record of the evidence supporting his claims, and any other relief this court deems just.

Respectfully Submitted,


James A. Powell 537041
Belle Isle Correctional Facility
1727 W Blumhauer Hwy
Lansing, MI 48246

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE
OF MICHIGAN,

Plaintiff,

VS

CASE NO. 08-6961

HON. TIMOTHY M. KENNY

JAMES ANDREW POWELL,

DEFENDANT. /

AFFIDAVIT OF ANDREW POWELL

I, James Powell, am competent and willing to testify under penalty of perjury truthfully and accurately as follows:

1. All factual assertions in the Motion For Relief From Judgment and Brief in Support are true and accurate.

2. I did not plan to shoot or kill Haider Al Ranzawie. I did intend to keep him from shooting me or grabbing me so that all of the men at the home could not harm me.

3. I shot Haider deliberately only after he refused to give me property back and refused or failed to pay for it; and only after he repeatedly said 'fuck you bitch'; and finally after he pushed me.

4. I did not take a gun to the Rutland address with intent to shoot or steal. I took the gun to Haider to see if he could fix it. Haider stated that he would give me some weed for it if he could get it to work.

5. Haider said the money was coming -- that he was waiting for someone to bring it by. I waited for many hours. I left and returned several times, and no money came.

6. I gave Haider a Pit Bull puppy up front and waited on the money. When it became obvious that Haider was not going to pay, I demanded my dog back. I said that the deal was off. See Original Police Statements. Ex. 2,3, and 4.

7. When I arrived at the Rutland address with the gun, there were no

Ex 1

bullet and it was inoperable. Haider had a clip that fit, and fixed it. Haider promised used if it was repairable. Haider took it into the basement, fixed it, and fixed it into cement mix bags and so in his basement. This gun had nothing to do with the puppy transaction.

8. When Haider returned outside, the gun was passed around and examined by all of the men outside. Some of the guys got into the car with it and out of the car. I lost track of who had it.

9. I brought my gun because I was outnumbered 4 to 1 and 5 to 1 at times, and because I knew Haider and his brothers had access to guns. I was tired of waiting for my money, and the dog was no longer at Haider's house.

10. I demanded the return of my dog and the argument started. When I complained and stated that he was a shady Arab who wasted my time playing games with my money, he began calling me bitches and motherfuckers, and then pushed me.

11. I believed that because I had my girlfriend bring a gun that this alone would suffice for first degree murder. My attorney did not adequately explain it any other way even when I voiced my concern and posed questions. My understanding of what little he explained was that it constituted first degree murder without any other evidence.

12. I had no witnesses and was only aware that the brothers were all saying that I arrived with a gun out demanding money. I was confused by the first degree and felony murder charges.

13. To be clear, There were two guns. There was one that I shot Haider with, and the one I gave to Haider for used hours earlier.

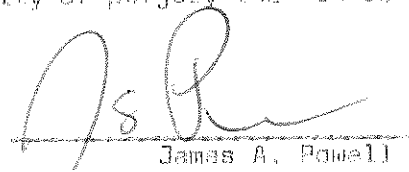
14. I was never aware that there was a defense to larceny and robbery called Claim of Right which says that if I in good faith believed that the property was mine rather than trying to take someone else's property, that

there is no crime. My attorney never brought this to my attention despite me telling him that all I did was demand my property back.

15. I never received any money from Halder.

16. I did not intend to shoot any of the other men at the house. I shot in the air because they tried to grab me and because I did not want to get shot. I did not know who had the gun, and they were all talking Arabic, and it appeared they were ordering someone to "shoot him, shoot him" followed by Arabic language.

I have read the foregoing and affirm under penalty of perjury that it is true and correct.



James A. Powell

Subscribed and sworn to before me on

this ____ day of _____, 2011.

Notary Public

WITNESS STATEMENT

CASE PROGRESS

FILE/CASE NO.

PRECINCT/SECTION <u>Homicide</u>		COMPLAINANT	
DATE <u>7-22-07</u>	TIME <u>1:20 Am</u>	PLACE <u>570 6890 Rutland</u>	STATEMENT TAKEN BY <u>P.O. Ed Williams</u>
WITNESS <u>Raad Aljmlawi</u>		RACE/SEX/AGE <u>M/27</u>	D.O.B. <u>[REDACTED]</u>
		HGT. <u>5'6"</u>	WGT. <u>120</u>
SOC. SEC. NO. <u>[REDACTED]</u>	RESIDENCE <u>[REDACTED]</u>	PHONE <u>[REDACTED]</u>	
EMPLOYER <u>[REDACTED]</u>	DEPARTMENT <u>[REDACTED]</u>	BADGE NO. <u>[REDACTED]</u>	SHIFT <u>[REDACTED]</u>
RESIDING WITH: <u>[REDACTED]</u>	CHILDREN/SCHOOL: <u>[REDACTED]</u>		
RELATIVES/FRIENDS: <u>Ali Aljihize</u>	ADDRESS <u>[REDACTED]</u>	PHONE <u>[REDACTED]</u>	

Q- Mr. Aljmlawi, what can you tell me about the Fatal shooting that occurred in front of 6890 Rutland late last night (7-21-07)?

A- I was standing in front of my house along with my brother, Haidere Aljihize, Muhamad, Yaz, & Ali. While we were outside a guy named Jimmy pulled up in a two-tone Cadillac Escalade, I believe it was brown and silver with 22" chrome rims. Jimmy got out the passenger side of the truck and walked up to Haidere. He asked Haidere if he had \$100. For him, Haidere told Jimmy NO. Jimmy started walking away and saying "Oh it's like that?" The next thing I know Jimmy pulled a gun from his waist band and just started shooting at Haidere. When he stopped shooting the other guys tried to grab Jimmy so he started shooting at them. Jimmy ran and jumped back in the Escalade and drove off North on Rutland. Muhamad & Yaz put Haidere in the car and drove him to the hospital.

Q- What is Jimmy Full name and describe him?

A- Jimmy Bush. B/M/21-22 6'2" thin build, 170lbs. Drk complex, with a short hair cut with a thin mustache & beard.

Q- Do you know where Jimmy lives?

A- On Grandmont St. he lives in the 5th or 6th House south of Warren on the East side of the street.

Q- Was Jimmy & Haidere having any problems?

A- No

Q- How do you know Jimmy?

A- I have known him for about 1yr. We use to live on Mettall St. So we met Jimmy smoking weed & playing basket ball.

Q- How many shots did Jimmy fire?

A- 4-5

Q AL-JIMLAIRAAI

EX-2

Q- Was anyone else in the Escalade with Jimmy?

A- Yes, his girl friend was driving.

Q- Do you know her name?

A- No.

Q- Can you describe her?

A- B/F/ 21-24 5'6" - 5'7", heavy build 220-230 lbs. med complexion with blond hair.

Q- Did she ever get out the truck?

A- No.

Q- What type of gun did Jimmy have?

A- I'm not sure, it was a black hand gun.

Q- Did Hardere have a gun?

A- No.

~~Q- AL-EMERSON ROAD~~

DEPARTMENT
POLICE

Ext. 3

WITNESS STATEMENT
CASE PROGRESS

FILE/CASE NO.

PRECINCT/SECTION HOMICIDE		COMPLAINANT HAIDER AL-GAMZAWI	
DATE 7/22/07	TIME	PLACE	STATEMENT TAKEN BY SGT. K. GARDNER
WITNESS A 97025238 KENTUCKY Lic RACE / SEX / AGE ALI AL GANZAWI ALI-KHUDEIR N A/M		D.O.B. [REDACTED]	HGT. 5'8 WGT. 190
SOCIAL SECURITY NO. [REDACTED]	RESIDENCE [REDACTED]	PHONE BUS. [REDACTED] RES. [REDACTED]	
EMPLOYER NONE	DEPARTMENT	BADGE NO.	SHIFT
RESIDING WITH: SELF	CHILDREN/ SCHOOL:		
RELATIVES/ FAMILY	ADDRESS KARIM KASIM AL-KHAFAJI [REDACTED]		PHONE [REDACTED]

Q CAN YOU TELL ME HOW HAIDER WAS SHOT TONIGHT?

A THE WE WERE SITTING ON THE PORCH AND WE WERE JUST TALKING

IT WAS ME, HAIDER, ALI, YEAS, ROD AND ANOTHER ALI.

WHILE WE WERE TALKING A BLACK MALE CAME WALKING UP. HE

WALKED UP AND HE PULLED OUT A GUN AND STARTED POINTING IT

AND SAYING, MONEY, MONEY. HAIDER STOOD UP AND HE PUSHED

HIM AND SAID NO MONEY. THAT IS WHEN HE STARTED SHOOTING.

THE FIRST TWO HIT HAIDER, THEN THE OTHERS SHOTS WENT BACK

AND FORTH. WHEN THE BLACK GUY CAME WALKING UP HE

CAME FROM A GRAY TRUCK MAYBE A CADILLAC I THINK.

AFTER THE SHOOTING THE TRUCK PULLED UP AND A

FEMALE WAS DRIVING THE GUY GOT INTO THE TRUCK

X Haider

↓ KARIM

ALI ALGANZAWI

Ext. 3

Q Describe the man that did the Shooting?

A BM 21; 5'11; SKINNY; Kind of Medium complexion; sideburns
chin hair; White T shirt; Blue Jeans; Small gun
maybe 25 CAL.

Q Describe the Female?

A No I can't

Q Was the Female Driving?

A Yes

Q The man that did the shooting, Did he get in the front
seat or back SEAT?

A Front

Q Have you ever seen the man before?

A NO

Q Would you recognize him IF you see him again?

A Yes

Q How many times did the man Fire the gun?

A 4 TWO and then TWO 4

Q Did he get Any money?

A Yes

X Ha, X Ken

~~KARLA~~

Q Do you know if anyone that was with you on the porch know the man that shot Haider?

A Only I do know the man

Q Was there any other men or women with the man that did the shooting?

A No one man, ONE woman

X HAITAM ~~SALEH~~

HAITAM SALEH AL-JUBURY
6432 Memorial

5/7/1978

~~REDACTED~~ (INTERPRETER)

~~KARIL~~ (INTERPRETER)

ALI ALGANZAWI

Ex-4

WITNESS STATEMENT

CASE PROGRESS

FILE/CASE NO.

PRECINCT/SECTION <i>Homicide</i>			COMPLAINANT <i>HAIDER KHUDEIR AL-GANZAWI</i>		
DATE <i>07/22/07</i>	TIME <i>1:40 AM</i>	PLACE <i>6890 Rutland</i>	STATEMENT TAKEN BY <i>TRV. J. HARRIS</i>		
WITNESS <i>ALI - A - HAMEED</i>		RACE / SEX / AGE <i>w/m / 17</i>	D.O.B. <i>[REDACTED]</i>	HGT <i>5'11</i>	WGT <i>165</i>
SOC. SEC. NO.	RESIDENCE <i>[REDACTED] SEABOARD, NY 11526</i>				
EMPLOYER <i>Student</i>	DEPARTMENT <i>Henry Ford Community College</i>			BADGE NO.	SHIFT
RESIDING WITH; <i>MALAHAN LAHHAD (MOTHER)</i>	CHILDREN / SCHOOL:				
RELATIVES / EDUCATION:	ADDRESS				
PHONE					

Q - WHAT CAN YOU TELL ME ABOUT THE FATAL SHOOTING OF HAIDER AL-GANZAWI?

A - I WAS HERE, WE WERE ALL SITTING ON THE PORCH, TALKING LAUGHING

Q - WHO IS WE

A - MY UNCLE HAIDER, HIS TWO BROTHERS ALI GANZAWI, YASS GANZAWI, MAHAMMED WHO IS A FRIEND.

Q - WHAT TIME WAS THIS

A - SOME TIME AFTER 10:00PM

Q - THEN WHAT HAPPENED

A - A GUY NAME JIMMY BUSH B/M/21 CAME OVER SOME TIME BEFORE 11PM HE HAD BEEN SNAPPED OFF BY HIS GIRL. JIMMY ASK MY UNCLE FOR \$100.00 THAT WAS OWED. MY UNCLE STATED THAT HE DIDN'T HAVE IT AND TO LEAVE HIS PROPERTY. I THEN SAW JIMMY ON HIS CELL PHONE, HE WAS TELLING HIS GIRL TO GO UP STAIRS TO
X *M. LaHhad*

EX-4

get his gun. Approx Ten minutes later his girl returned, Jimmy walked over to the vehicle and got into the passenger side. He got out pulling a gun from his back and said to my uncle "OH it's like that I and fired a shot."

Q- Where was your uncle standing

A- By his vehicle in the driveway

Q- Where was Jimmy

A- On the sidewalk, partially on the grass.

Q- What did you do

A- I ran into the house to the back door and out, I heard three more shots.

Q- What did Harder owe Jimmy & \$100.00 for.

A- NO, Jimmy wanted to borrow a \$100 from Harder

Q- Who conveyed Harder to the hospital

A- MAHAMED AND HIS BROTHER YOUS.

Q- How long have you known Jimmy

A- ABOUT 1 WEEK HE COMES AROUND AND CHILL WITH MY UNCLE.

X Arle Brown

Q - DESCRIBE Jimmy

A - b/m/21 6'2 240 lbs. MED COMPLEX
SLIGHT FACIAL HAIR, HE'S ALWAYS
HYPER UP LIKE HE'S ON PILLS OR
SOMETHING.

Q - DESCRIBE THE VEHICLE THAT JIMMY
WAS IN

A - 2004 2 TONE ESCALADE BEIGE/
DARK BEIGE WITH 22" RIMS.
HE RESIDES AT 6870 GRANDMONT.

X alt' admission

WITNESS STATEMENT

CASE PROGRESS

FILE/CASE NO.

07-209

PRECINCT/SECTION HOMICIDE SECTION		COMPLAINANT ALGANZI HAIDER	
DATE 7-24-07	TIME 1:55P	PLACE FLO 6890 Rutland	STATEMENT TAKEN BY P.O. K.D. MILLER
WITNESS ALI AL-HAMEED		RACE / SEX / AGE W/M/17	D.O.B. [REDACTED]
SOC. SEC. NO. [REDACTED]		RESIDENCE [REDACTED]	HGT. 5-11
EMPLOYER [REDACTED]		DEPARTMENT [REDACTED]	WG.T. 165
RESIDING WITH: MALIHA LAHHMUD - mother		PHONE [REDACTED]	BUS. RES. [REDACTED]
RELATIVES/ FRIENDS: [REDACTED]		BADGE NO. [REDACTED]	SHIFT [REDACTED]
ADDRESS [REDACTED]		PHONE [REDACTED]	

Q: ALI ON JULY 22, 2007 ALGANZI HAIDER WAS FATALLY SHOT IN FRONT OF 6890 RUTLAND?

A: YES.

Q: DID YOU SEE THE PERSON THAT SHOT ALGANZI?

A: YES.

Q: ARE YOU FAMILIAR WITH THIS PERSON OR ARE YOU ACQUAINTED WITH THE SHOOTER?

A: YES.

Q: HOW LONG HAVE YOU KNOWN THE SHOOTER?

A: FOR ABOUT A WEEK. HE WOULD COME BY HERE AT RUTLAND. THE FORTH DAY I SAW HIM HE CAME BY HERE AT RUTLAND AND WANTED TO SELL ME A LITTLE MUTT PIT BULL PUPPY. HE TRIED TO CHARGE ME \$80.00 TO TAKE HIS PUPPY. I TOLD HIM I DON'T WANT HIS PUPPY. HE SAID TAKE MY CELL NUMBER DOWN AND CALL ME.

Q: WHAT CELL NUMBER DID HE GIVE YOU?

A: [REDACTED]

EX-46

Q: DID YOU EVER CALL HIS NUMBER?

A: YES. I CALLED HIM AFTER MY UNCLE WAS SHOT SO I COULD GIVE YOU HIS NAME. I WANTED YOU TO KNOW HIS NAME IS JIMMY BUSH. THAT'S WHAT WAS ON HIS ANSWERING MESSAGE.

Q: I AM GOING TO SHOW YOU A PHOTOGRAPH. DO YOU RECOGNIZE THIS PERSON?

A: YEAH. THAT'S HIM. THAT'S THE GUY THAT SHOT MY UNCLE.

Q: HOW FAR AWAY WERE YOU FROM THE SHOOTER?

A: ABOUT 10'. I WAS ON THE PORCH. HE WAS BEHIND THE COUCH ON THE LEFT SIDE OF THE DRIVEWAY.

Q: WHAT TIME DID THIS TAKE PLACE?

A: ABOUT 10:45 PM.

Q: HOW WAS THE LIGHTING AT THAT TIME?

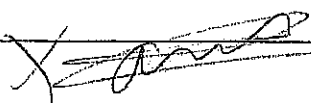
A: A STREET LIGHT AND MY FRONT DOOR WAS OPEN WITH THE LIGHTS ON INSIDE.

Q: WAS THE PORCH LIGHT ON?

A: NO. THE LIGHTS INSIDE WERE ENOUGH. HE WAS AT THE HOUSE FOR ABOUT 10 MINUTES.

Q: ARE YOU POSITIVE THAT THE PERSON IN THE PHOTO IS THE PERSON YOU SAW SHOOT YOUR UNCLE?

A: YES.

X 

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE
OF MICHIGAN,

CASE NO. 08-6961-CZ

VS

HON. TIMOTHY M. KENNY

JAMES ANDREW POWELL,
/

MOTION FOR EVIDENTIARY HEARING

Now comes Defendant, James A. Powell, in propria persona, pursuant to MCR 6.500(A), and moves this court for an order requiring an evidentiary hearing in the above-entitled matter regarding allegations of ineffective assistance of counsel, and voluntariness of the plea, and innocence to excuse default.

Respectfully Submitted,



James A. Powell 537041
Bellamy Creek Correctional Facility
1727 W Bluewater Hwy
Ionia, MI 48846
Date: 9-1-11

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE
OF MICHIGAN,

CASE NO. 05-6961-CZ

VS

HON. TIMOTHY M. KENNY

JAMES ANDREW POWELL,
_____/

BRIEF IN SUPPORT OF MOTION FOR EVIDENTIARY HEARING

STATEMENT OF THE CASE

Defendant James Andrew Powell, in propria persona, was convicted by plea of guilty to 2nd degree murder, assault with a dangerous weapon, felon in possession, and felony firearm -- second. Defendant was sentenced to 25-40 years, plus 2. All other lesser sentences are served concurrently.


After conviction, Defendant realized that what he admitted to was not murder, and that the weight of the Prosecution's case was not great enough to sustain a first degree murder or felony murder conviction. Defendant also believes that the conviction and sentence bargain was illusory, and that non-record evidence supports his claim that he was given poor advice by counsel. Ultimately, Defendant contends that there was no meeting of the minds with respect to the plea deal.

ARGUMENT

Where non-record evidence forms the bases of the claims made by Defendant, and a record is necessary to evaluate those claims, a hearing is required. PEOPLE V GINTHER, 390 Mich 436 (1973).

Wherefore, Defendant respectfully requests that this court enter an order for him to appear at a hearing and make a record of the evidence supporting his claims, and any other relief this court deems just.

Respectfully Submitted,



James A. Powell 537041
DeLamy Creek Correctional Facility
1727 W Bluewater Hwy
1

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE
OF MICHIGAN,

Plaintiff,

VS

CASE NO. 08-6951

HON. TIMOTHY M. KENNY

JAMES ANDREW POWELL,

DEFENDANT. /

AFFIDAVIT OF ANDREW POWELL

I, James Powell, am competent and willing to testify under penalty of perjury truthfully and accurately as follows:

1. All factual assertions in the Motion For Relief From Judgment and Brief in Support are true and accurate.

2. I did not plan to shoot or kill Haider Al Genzawi. I did intend to keep him from shooting me or grabbing me so that all of the men at the home could not harm me.

3. I shot Haider deliberately only after he refused to give me property back and refused or failed to pay for it; and only after he repeatedly said 'fuck you bitch'; and finally after he pushed me.

4. I did not take a gun to the Rutland address with intent to shoot or steal. I took the gun to Haider to see if he could fix it. Haider stated that he would give me some weed for it if he could get it to work.

5. Haider said the money was coming -- that he was waiting for someone to bring it by. I waited for many hours. I left and returned several times, and no money came.

6. I gave Haider a Pit Bull puppy up front and waited on the money. When it became obvious that Haider was not going to pay, I demanded my dog back. I said that the deal was off. See Original Police Statements. Ex. 2,3, and 4.

7. When I arrived at the Rutland address with the gun, there were no

bullets and it was inoperable. Haider had a clip that fit, and fixed it. Haider promised weed if it was repairable. Haider took it into the basement, fixed it, and fired it into cement mix bags and sod in his basement. This gun had nothing to do with the puppy transaction.

8. When Haider returned outside, the gun was passed around and examined by all of the men outside. Some of the guys got into the car with it and out of the car. I lost track of who had it.

9. I brought my gun because I was outnumbered 4 to 1 and 5 to 1 at times, and because I knew Haider and his brothers had access to guns. I was tired of waiting for my money, and the dog was no longer at Haider's house.

10. I demanded the return of my dog and the argument started. When I complained and stated that he was a shady Arab who wasted my time playing games with my money, he began calling me bitches and motherfuckers, and then pushed me.

11. I believed that because I had my girlfriend bring a gun that this alone would suffice for first degree murder. My attorney did not adequately explain it any other way even when I voiced my concern and posed questions. My understanding of what little he explained was that it constituted first degree murder without any other evidence.

12. I had no witnesses and was only aware that the brothers were all saying that I arrived with a gun out demanding money. I was confused by the first degree and felony murder charges.

13. To be clear, There were two guns. There was one that I shot Haider with, and the one I gave to Haider for weed hours earlier.


14. I was never aware that there was a defense to larceny and robbery called Claim of Right which says that if I in good faith believed that the property was mine rather than trying to take someone else's property, that

there is no crime. My attorney never brought this to my attention despite me telling him that all I did was demand my property back.

15. I never received any money from Haider.

16. I did not intend to shoot any of the other men at the house. I shot in the air because they tried to grab me and because I did not want to get shot. I did not know who had the gun, and they were all talking Arabic, and it appeared they were ordering someone to "shoot him, shoot him" followed by Arabic language.

I have read the foregoing and affirm under penalty of perjury that it is true and correct.


James A. Powell

Subscribed and sworn to before me on
this _____ day of _____, 2011.

Notary Public

PRECINCT/SECTION <u>Homicide</u>		COMPLAINANT	
DATE <u>7-22-07</u>	TIME <u>1:30 AM</u>	PLACE <u>6890 Rutland</u>	STATEMENT TAKEN BY <u>P.O. Ed Williams</u>
WITNESS <u>Raad Aljmlawi</u>		RACE/SEX/AGE <u>M/27</u>	D.O.B. <u>[REDACTED]</u>
SOC. SEC. NO. <u>[REDACTED]</u>		RESIDENCE <u>[REDACTED]</u>	PHONE <u>[REDACTED]</u>
EMPLOYER <u>[REDACTED]</u>	DEPARTMENT <u>[REDACTED]</u>	BADGE NO. <u>[REDACTED]</u>	SHIFT <u>[REDACTED]</u>
RESIDING WITH: <u>[REDACTED]</u>		CHILDREN/SCHOOL: <u>[REDACTED]</u>	
RELATIVES/FRIENDS: <u>Ali Aljihize</u>		ADDRESS <u>[REDACTED]</u>	
		PHONE <u>[REDACTED]</u>	

Q- Mr. Aljmlawi, what can you tell me about the Fatal shooting that occurred in front of 6890 Rutland late last night (7-21-07)?

A- I was standing in front of my house along with my brother, Haidere Aljihize, Muhamad, Yaz, & Ali. While we were outside a guy named Jimmy pulled up in a two-tone Cadillac Escalade, I believe it was brown and silver with 22" chrome rims. Jimmy got out the passenger side of the truck and walked up to Haidere. He asked Haidere if he had \$100. For him. Haidere told Jimmy no. Jimmy started walking away and saying "Oh it's like that?" The next thing I know Jimmy pulled a gun from his waist band and just started shooting at Haidere. When he stopped shooting the other guys tried to grab Jimmy so he started shooting at them. Jimmy ran and jumped back in the Escalade and drove off North on Rutland. Muhamad & Yaz put Haidere in the car and drove him to the hospital.

Q- What is Jimmy full name and describe him?

A- Jimmy Bush. B/M/21-22 6'2" thin build, 170/lbs. Drk complex, with a short hair cut. with a thin mustache & beard.

Q- Do you know where Jimmy lives?

A- On Grandmont St. he lives in the 5th or 6th House south of Warren on the East side of the street.

Q- Was Jimmy & Haidere having any problems?

A- No

Q- How do you know Jimmy?

A- I have known him for about 1yr. We use to live on Mettall St. So we met Jimmy smoking weed & playing basket ball.

Q- How many shots did Jimmy fire?

A- 4-5

D AL-SIMLAIRAAI

Q- Was anyone else in the Escalade with Jimmy?

A- yes, his girl friend was driving.

Q- Do you know her name?

A- No.

Q- Can you describe her?

A- B/F/ 21-24 5'6" - 5'7", heavy build 220-230 lbs. med complex with blond hair.

Q- Did she ever get out the truck?

A- No.

Q- What type of gun did Jimmy have?

A- I'm not sure, it was a black handgun.

Q- Did Hardere have a gun?

A- No.

AL-5 MCLPS ROAD

DETROIT
DEPARTMENT
POLICE

WITNESS STATEMENT
CASE PROGRESS

PRECINCT/SECTION HOMICIDE		COMPLAINANT HAIDER AL-GAMZAWI	
DATE 7/22/07	TIME	PLACE	STATEMENT TAKEN BY SGT. K. GARDNER
WITNESS A 97025238 KENTUCKY Lic RACE / SEX / AGE ALI AL GANZAWI ALI-KHUDEIR N A/M		D.O.B. [REDACTED]	HGT. 5'8 WG T. 190
SOCIAL SEC. NO. [REDACTED]	RESIDENCE [REDACTED]	PHONE BUS. [REDACTED] RES. [REDACTED]	
EMPLOYER NONE	DEPARTMENT	BADGE NO.	SHIFT
RESIDING WITH: SELF	CHILDREN/ SCHOOL:		
RELATIVES/ FRIENDS: KARIM KASIM AL-KHAFAJI	ADDRESS [REDACTED]		PHONE [REDACTED]

Q CAN YOU TELL ME HOW HAIDER WAS SHOT TONIGHT?

A THE WE WERE SITTING ON THE PORCH AND WE WERE JUST TALKING IT WAS ME, HAIDER, ALI, YEAS, ROD AND ANOTHER ALI. WHILE WE WERE TALKING A BLACK MALE CAME WALKING UP. HE WALKED UP AND HE PULLED OUT A GUN AND STARTED POINTING IT AND SAYING, MONEY, MONEY. HAIDER STOOD UP AND HE PUSHED HIM AND SAID NO MONEY. THAT IS WHEN HE STARTED SHOOTING. THE FIRST TWO HIT HAIDER, THEN THE OTHERS SHOTS WENT BACK AND FORTH. WHEN THE BLACK GUY CAME WALKING UP HE CAME FROM A GRAY TRUCK MAYBE A CADILLAC I THINK. AFTER THE SHOOTING THE TRUCK PULLED UP AND A FEMALE WAS DRIVING THE GUY GOT INTO THE TRUCK

X Haider

↓ KARIM

ALI ALGANZAWI

Ex 3

Q Describe the man that did the Shooting?

A BM 21; 5'11; SKINNY; Kind of Medium complexion; sideburns
chin hair; White T shirt; Blue Jeans; Small gun
maybe 25 CAL.

Q Describe the Female?

A NO I CAN'T

Q Was the Female Driving?

A Yes

Q the man that did the shooting, Did he get in the front
seat or back SEAT?

A Front

Q Have you ever seen the man before?

A NO

Q Would you recognize him IF you see him again?

A Yes

Q How many times did the man Fire the gun?

A 4 TWO and then TWO 4

Q Did he get Any money?

A Yes

X Ha, X Ken

~~KARL~~

Q Do you know if anyone that was with you on the porch know the man that shot Haider?

A Only I do know the man

Q Was there any other men or women with the man that did the shooting?

A No one man, ONE woman

X HAITAM ~~SALEH~~

HAITAM SALEH AL-JUBURY
6432 Memorial

5/7/1978

~~REDACTED~~ (INTERPRETER)

~~KARIL~~ (INTERPRETER)

ALI ALGANZAWI

WITNESS STATEMENT

CASE PROGRESS

FILE/CASE NO.

PRECINCT/SECTION <i>Homicide</i>		COMPLAINANT <i>HAIDER KHUDEIR AL-GANZAWI</i>	
DATE <i>07/22/07</i>	TIME <i>1:40 AM</i>	PLACE <i>6890 Rutland</i>	STATEMENT TAKEN BY <i>TWO. Y. HANIS HANDY</i>
WITNESS <i>ALI - A. HAMEED</i>		RACE / SEX / AGE <i>W/M / 17</i>	D.O.B. <i>[REDACTED]</i>
SOC. SEC. NO.		HGT <i>5'11</i>	WGT <i>165</i>
RESIDENCE <i>[REDACTED]</i>		EMPLOYER <i>Student</i>	
DEPARTMENT <i>Henry Ford Community College</i>		BADGE NO.	SHIFT
RESIDING WITH: <i>MALAHAM LAHHAD (MOTHER)</i>		CHILDREN / SCHOOL:	
RELATIVES / CO-SIGNS:		ADDRESS	
		PHONE	

Q - WHAT CAN YOU TELL ME ABOUT THE FATAL SHOOTING OF HAIDER AL-GANZAWI?

A - I WAS HERE, WE WERE ALL SITTING ON THE PORCH, TALKING LAUGHING

Q - WHO IS WE

A - MY UNCLE HAIDER, HIS TWO BROTHERS ALI GANZAWI, YASS GANZAWI, MAHAMMED WHO IS A FRIEND.

Q - WHAT TIME WAS THIS

A - SOME TIME AFTER 10:00PM

Q - THEN WHAT HAPPENED

A - A GUY NAME JIMMY BUSH B/M/21 CAME OVER SOME TIME BEFORE 11PM HE HAD BEEN DRIPPED OFF BY HIS GIRL. JIMMY ASK MY UNCLE FOR \$100.00 THAT WAS OWED. MY UNCLE STATED THAT HE DIDN'T HAVE IT AND TO LEAVE HIS PROPERTY. I THEN SAW JIMMY ON HIS CELL PHONE, HE WAS TELLING HIS GIRL TO GO UP STAIRS TO
X *Malaham*

(46)

get his gun. Approx Ten minutes later his gun returned, Jimmy walked over to the vehicle and got into the passenger side. He got out pulling a gun from his back and said to my uncle "OH it's like that I and fired a shot."

Q- Where was your uncle standing

A- By his vehicle in the driveway

Q- Where was Jimmy

A- On the sidewalk, partially on the grass.

Q- What did you do

A- I ran into the house to the back door and out, I heard three more shots.

Q- What did Harder owe Jimmy & \$100.00 for.

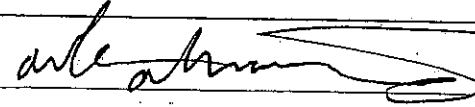
A- NO, Jimmy wanted to borrow a \$100 from Harder

Q- Who conveyed Harder to the hospital

A- MAHAMED AND HIS Brother Yous.

Q- How long have you known Jimmy

A- About 1 week He comes around and chill with my uncle.

X 

Q - DESCRIBE Jimmy

A - B/M/21 6'2 240 lbs. MED COMPLEX
SLIGHT FACIAL HAIR, HE'S ALWAYS
HYPER UP LIKE HE'S ON PILLS OR
SOMETHING.

Q - DESCRIBE THE VEHICLE THAT JIMMY
WAS IN

A - 2004 2 TONE ESCALADE BEIGE/
DARK BEIGE WITH 22" RIMS.
HE RESIDES AT 6870 GRANDMONT.

X all authorized

WITNESS STATEMENT

CASE PROGRESS

FILE/CASE NO.

07-209

PRECINCT/SECTION Homicide SECTION		COMPLAINANT ALGANZI HAIDER	
DATE 7-24-07	TIME 1:55P	PLACE FLO 6890 Rutland	STATEMENT TAKEN BY P.O. K.D. MILLER
WITNESS ALI AL-HAMEED	RACE / SEX / AGE W/M/17	D.O.B. [REDACTED]	HGT. 5-11
SOC. SEC. NO.	RESIDENCE [REDACTED]	PHONE [REDACTED]	WGT. 165
EMPLOYER	DEPARTMENT	BUS. [REDACTED]	RES. [REDACTED]
RESIDING WITH: MALIHA LAHHMAD - mother	CHILDREN/ SCHOOL:	BADGE NO.	SHIFT
RELATIVES/ COENING	ADDRESS	PHONE	

Q: ALI ON July 22 2007 ALGANZI HAIDER WAS FATALLY SHOT IN FRONT OF 6890 RUTLAND?

A: YES.

Q: DID YOU SEE THE PERSON THAT SHOT ALGANZI?

A: YES.

Q: ARE YOU FAMILIAR WITH THIS PERSON OR ARE YOU ACQUAINTED WITH THE SHOOTER?

A: YES.

Q: HOW LONG HAVE YOU KNOWN THE SHOOTER?

A: FOR ABOUT A WEEK. HE WOULD COME BY HERE AT RUTLAND. THE FORTH DAY I SAW HIM HE CAME BY HERE AT RUTLAND AND WANTED TO SELL ME A LITTLE MUTT PIT BULL PUPPY. HE TRIED TO CHARGE ME \$80.00 TO TAKE HIS PUPPY. I TOLD HIM I DON'T WANT HIS PUPPY. HE SAID TAKE MY CELL NUMBER DOWN AND CALL ME.

Q: WHAT CELL NUMBER DID HE GIVE YOU?

A: [REDACTED]

Q: DID YOU EVER CALL HIS NUMBER?

A: YES. I CALLED HIM AFTER MY UNCLE WAS SHOT SO I COULD GIVE YOU HIS NAME. I WANTED YOU TO KNOW HIS NAME IS JIMMY BUSH. THAT'S WHAT WAS ON HIS ANSWERING MESSAGE.

Q: I AM GOING TO SHOW YOU A PHOTOGRAPH. DO YOU RECOGNIZE THIS PERSON?

A: YEAH. THAT'S HIM. THAT'S THE GUY THAT SHOT MY UNCLE.

Q: HOW FAR AWAY WERE YOU FROM THE SHOOTER?

A: ABOUT 10'. I WAS ON THE PORCH. HE WAS BEHIND THE COUCH ON THE LEFT SIDE OF THE DRIVEWAY.

Q: WHAT TIME DID THIS TAKE PLACE?

A: ABOUT 10:45 PM.

Q: HOW WAS THE LIGHTING AT THAT TIME?

A: A STREET LIGHT AND MY FRONT DOOR WAS OPEN WITH THE LIGHTS ON INSIDE.

Q: WAS THE PORCH LIGHT ON?

A: NO. THE LIGHTS INSIDE WERE ENOUGH. HE WAS AT THE HOUSE FOR ABOUT 10 MINUTES.

Q: ARE YOU POSITIVE THAT THE PERSON IN THE PHOTO IS THE PERSON YOU SAW SHOOT YOUR UNCLE?

A: YES.

